

(ii) Any material received by the OIG after the 30-day period allowed will not be considered by the ALJ or the DAB.

(3) The OIG's determination continues in effect unless reversed by a hearing.

(c) *Rights to judicial review.* Any practitioner or other person dissatisfied with a final decision of the Secretary may file a civil action in accordance with the provisions of section 205(g) of the Act.

PART 1005—APPEALS OF EXCLUSIONS, CIVIL MONEY PENALTIES AND ASSESSMENTS

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AUTHORITY: 42 U.S.C. 405(a), 405(b), 1302, 1320a-7, 1320a-7a and 1320c-5.

SOURCE: 57 FR 3350, Jan. 29, 1992, unless otherwise noted.

§ 1005.1 Definitions.

Civil money penalty cases refer to all proceedings arising under any of the statutory bases for which the OIG has been delegated authority to impose civil money penalties under Medicare or the State health care programs.

DAB refers to the Departmental Appeals Board or its delegatee.

Exclusion cases refer to all proceedings arising under any of the statutory bases for which the OIG has been delegated authority to impose exclu-

sions under Medicare or the State health care programs.

Inspector General (IG) means the Inspector General of the Department of Health and Human Services or his or her designees.

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§ 1005.2 Hearing before an administrative law judge.

(a) A party sanctioned under any criteria specified in parts 1001, 1003 and 1004 of this chapter may request a hearing before an ALJ.

(b) In exclusion cases, the parties to the proceeding will consist of the petitioner and the IG. In civil money penalty cases, the parties to the proceeding will consist of the respondent and the IG.

(c) The request for a hearing will be made in writing to the DAB; signed by the petitioner or respondent, or by his or her attorney; and sent by certified mail. The request must be filed within 60 days after the notice, provided in accordance with §§1001.2002, 1001.203 or 1003.109, is received by the petitioner or respondent. For purposes of this section, the date of receipt of the notice letter will be presumed to be 5 days after the date of such notice unless there is a reasonable showing to the contrary.

(d) The request for a hearing will contain a statement as to the specific issues or findings of fact and conclusions of law in the notice letter with which the petitioner or respondent disagrees, and the basis for his or her contention that the specific issues or findings and conclusions were incorrect.

(e) The ALJ will dismiss a hearing request where—

(1) The petitioner's or the respondent's hearing request is not filed in a timely manner;

(2) The petitioner or respondent withdraws his or her request for a hearing;

(3) The petitioner or respondent abandons his or her request for a hearing; or

(4) The petitioner's or respondent's hearing request fails to raise any issue which may properly be addressed in a hearing.

[57 FR 3350, Jan. 29, 1992, as amended at 65 FR 24418, Apr. 26, 2000]